New Laws and Rules Core Course – *FREQUENTLY ASKED QUESTIONS*

Instructors for the new core course "New Laws and Rules Core Course" are reporting to the Real Estate Commission some of the most frequently asked questions by licensees during New Laws and Rules course sessions. What follows is a list of the most frequently asked questions with responses from the Real Estate Commission. The Real Estate Commission is sharing this information with all core course instructors and is posting this information on the Commission's website to inform licensees and the public.

Please Note: Questions regarding changes to the licensing requirements and qualifications for associate brokers and sales agents and continuing education changes are listed under the heading "Questions about Licensing Changes – Including Continuing Education" on this site.

Q. I have an oral agreement to represent a buyer-client, will I need a written buyer representation agreement to continue this relationship after July 1, 2006?

A. Yes. Effective July 1, 2006, all brokerage agreements (listings and buyer representation agreements) between a real estate company and a client buyer or seller must be in writing and, at a minimum, include the four (4) following provisions (see 32 MRSA §13177-A):
1. The signature of the client to be charged;
2. The terms and conditions of the brokerage services to be provided;
3. The method or amount of compensation to be paid; and
4. The date upon which the agreement will expire.

Q. I have four questions about the new record retention schedules required by Chapter 400 (3) of the Commission's rules. Specifically, do the following documents need to be retained for 3 calendar years under the control of the designated broker:
1. Expired Listings?

A. Yes. (see Section (3)(1)(B) of Chapter 400);

2. Emails alerting other licensees of a new listing?

A. No.

3. Every document prepared to advertise real estate?

A. No. Section (3)(1)(C) of Chapter 400 requires that property disclosure forms, data sheets and other property information prepared by the real estate brokerage agency or one of its affiliated licensees to promote property for sale or purchase must be retained for the 3 calendar years. However, the rule does not require advertising as defined by Chapter 400, Section (1)(1) be retained under the record retention rule. Prudent licensees may want to retain a copy of a master advertising document prepared for a listing to respond to inquiries regarding advertising issues but are not required to do so by this rule;

4. *The seller's written authorization to advertise property as required by Chapter 410 (1)(6)?*

A. Yes. Most often the authorization would not be a separate document but rather would be part of the written listing agreement between a real estate company and a seller-client. For those listings obtained by a real estate company acting as a transaction broker there may not be a written agreement. In those instances the transaction broker would be required to retain a copy of the signed authorization by the seller.

Q. Regarding Websites: what is the requirement for the company name and contact information? Must it appear on each page, or is it ok if this information appears on the company home page?

A. It depends. If the public can access any page of the website without going through the homepage, then the company name and contact information must be displayed on each page. See Chapter 410 – 1, 2, & 3 of the Commission's rules.

Q. *The new retention rule (Chapter 400 [1]) requires that all real estate brokerage records are to be under the control of the designated broker. Does this mean the designated broker must designate a central location for all records to be kept?*

A. No. The rule requires that brokerage records be under the control of the designated broker. The designated broker will need to determine the appropriate system to maintain brokerage records to comply with this rule. In some offices a central location for all records (whether paper, electronic or a combination) may be appropriate and other offices the best system may be to allow affiliated licensees to keep the records in the affiliated licensees' area in the office. In both instances, the designated broker must have access to those records and have a policy in place that assures that no records are removed by an affiliated licensee or others without the designated broker's knowledge and approval.

Q. My company has golf shirts and jackets with the company logo, will we need to add either the company address or phone number to comply with the new advertising rule (Chapter 410 [1][1])? We also have pens and coffee mugs with the company logo, will we need to add company address or phone number?

A. No.

Q. Do we need the seller's written permission each time we print listing information from the MLS?

A. No. Chapter 410 (1)(5) requires written permission from the seller to advertise real estate for sale. Real estate companies must ensure that the listing agreement includes a provision for the seller to consent or not consent to the company's promotion of the property by advertisement or a separate document may be created for this purpose. The listing provision or separate document, at a minimum, should provide

for the seller's consent to submission of the listing information to the multiple listing service.

Q. Will I need to get the seller's written permission to advertise listings obtained prior to July 1, 2006?

A. Yes. If the listing agreement did not include a provision for the seller to consent, in writing, to advertise the property, you will need to obtain the seller's written permission to continue to advertise listings that remain in effect on or after July 1, 2006.

Q. When a licensee does a "BPO" (broker price opinion) for compensation, is the licensee an agent with a client, and, therefore must comply with the written brokerage agreement requirements of 32 MRSA §13177-A?

A. Yes. Brokers and associate brokers may perform certain appraisal services, which include BPOs, under the exemption provision of the real estate appraisal law (32 MRSA §14003). The Appraisal Law authorizes brokers and associate brokers to perform certain appraisal services under the provisions of the Brokerage Law (32 MRSA, c. 114). As such, appraisals prepared by a broker or associate broker are brokerage services that may only be performed on behalf of the real estate company where they are licensed and must comply with all other relevant provisions of the Brokerage Law and Commission rules. In the scenario above, the BPO is not a free opinion of value provided to a seller to obtain a listing but rather is the analysis of real estate prepared for a party for compensation. As such, a transaction broker may not prepare a BPO because transaction brokers are prohibited under 32 MRSA §13283 (3)(A) from analyzing a property for the benefit of any party. Therefore, a licensee providing this brokerage service is an agent and the real estate company is required to have a written brokerage agreement with the client that complies with the requirements of 32 MRSA §13177-A, which requires a written brokerage agreement and, at a minimum, must include the four (4) following provisions:

1. The signature of the client to be charged;
2. The terms and conditions of the brokerage services to be provided;
3. The method or amount of compensation to be paid; and
4. The date upon which the agreement will expire.

Q. A real estate trust account must be in a federally insured account, which includes insurance coverage of up to 100,000. If I take a deposit in excess of $100,000 will I be in violation?

A. No. A prudent designated broker may want to purchase additional insurance for this deposit but depositing an amount in excess of $100,000 in the real estate trust account is not a violation of the trust account statute or Commission rules.
Note to All Designated Brokers regarding real estate trust accounts: Designated brokers should confirm with the bank that the real estate trust account is properly identified as a "real estate trust account" and that the bank identifies this account as a fiduciary account as defined by the Federal Deposit Insurance Corporation ("FDIC").

Q. Can a licensee change from an agent to a transaction broker in the middle of a transaction?

A. Yes. There is no statutory provision or Commission rule that prohibits an agent from changing roles to a transaction broker but it is unclear under what circumstances this would occur. The licensee would, at a minimum, be obligated to maintain confidential information obtained during the agent-client relationship as required by 32 MRSA §13281 (2)(B).

Q. While I'm on floor duty a buyer comes in and asks me for an opinion of value for property located at 12 Main Street listed by another real estate company. Can I provide a free opinion of value to solicit this buyer's business?

A. Yes. The licensee in this scenario is not acting as an agent for the seller of the 12 Main Street property. The free opinion of value would be offered to the buyer to solicit the buyer's business and as such may be provided by the licensee (see Chapter 410 [3][1]).

Q. Chapter 410 (13) requires affiliated licensees to provide originals or true copies of all real estate brokerage documents and records (as listed in Chapter 400, section 3 of the Commission's rules) prepared in a real estate transaction to the designated broker within 5 calendar days after execution of the document or record. Does "executed" mean when an offer is signed by the buyer, for example, or does the 5 day time period only begin if there is a contract signed by both parties?

A. The 5 calendar days begins from the signing of the offer by the buyer in this scenario.

Q. Will the changes effective July 1, 2006 require me to change my company's real estate brokerage relationship policy?

A. Yes. At a minimum, each real estate brokerage agency will be required to amend the company's policy to incorporate the new presumption of transaction broker. 32 MRSA §13282 provides that a real estate brokerage agency is presumed to be a transaction broker unless the agency has agreed, in a written brokerage agreement meeting the requirements of 32 MRSA §13177-A, to represent either a buyer or seller.

Q. The term "transaction broker" was the subject of an advisory ruling issued by the Commission several years ago and is a term generally understood by licensees. I heard the new law defines the term "transaction broker." Is this a new definition?

A. Yes. 32 MRSA §13271 (13-A) defines transaction broker as meaning "a real estate brokerage agency that provides real estate brokerage services to one or more parties in a real estate transaction without a fiduciary relationship as a buyer agent, a seller agent, a subagent or a disclosed dual agent." As noted in the question above, licensees are presumed to be a transaction broker unless there is a written brokerage

agreement with a buyer or seller client. Further, as provided by §13283 a transaction broker has limited responsibilities and is prohibited from performing the brokerage services listed in subsection 3 of this section.

Q. Will licensees be required to give Agency Disclosure Form #2 to buyers and sellers after July 1, 2006?

A. No. The Commission has developed a new agency relationship form (see Chapter 410 [9]). The new disclosure form is called "Real Estate Brokerage Relationships Form" and is available to be downloaded from this site. The new Form is required to be used on or after July 1, 2006.

Q. I am a designated broker and I'm thinking of opening a new trust account in the local credit union, are there any special rules about having the real estate trust account in a credit union?

A. Yes. 32 MRSA §13178 effective July 1, 2006 requires a real estate brokerage agency to maintain the real estate trust account(s) in a "federally insured account or accounts in a financial institution authorized to do business in this State . . ." The requirement of a "federally insured account" means that each deposit in a real estate trust account must be insured to the limit set by law. Insurance coverage for credit union accounts (including real estate trust accounts) may be limited to members of the credit union. Designated brokers who currently have or may be considering opening a real estate trust account in a credit union will need to confirm that each deposit is covered by insurance to be in compliance with this section of the Brokerage Act.

Q. My company does not compensate all other real estate companies in the same manner. To comply with Chapter 410 (6)(1) am I required to provide the names of the real estate companies and specific compensation policy for each of the companies that I compensate differently in the written brokerage agreement with a seller or buyer client?

A. No. Chapter 410 (6)(1) "Disclosure of Real Estate Brokerage Agency Compensation Policy – Other Agencies" requires all real estate agencies to include a statement disclosing the agency's policy on cooperating with and compensating other real estate brokerage agencies in all written brokerage agreements for the sale or purchase of real estate with a client buyer or seller. In addition, if the agency does not compensate all other real estate brokerage agencies in the same manner, the statement must, at a minimum, also include the following: "It is the policy of <u>this real estate brokerage agency</u> (or insert agency trade name) to not compensate all other real estate agencies in the same manner. This policy may limit the participation of other real estate brokerage agencies in the marketplace."

Chapter 410 (6) is intended to notify clients of the agency's policy on cooperating with and compensating other agencies in the sale or purchase of real estate and that these policies may impact the client's interest. Real estate brokerage agencies that do not compensate all other agencies in the same manner are not required, by this rule, to

include the specific details of the compensation policy in the written brokerage agreement but will be expected to provide the specific details if asked by the client.